

DMR ADVISORY COUNCIL MEETING
May 21, 2003, 1:00 p.m.
Minutes

1. Welcome

A meeting of the Department of Marine Resources (DMR) Advisory Council (AC) was held on this date at the DMR Laboratory in West Boothbay Harbor. Council members who attended the meeting included: **Chair Blair Pyne, Lori Howell, Charlton Ames, Steve Train, Bill Sutter, Craig Pendleton, Allyson Jordan and Kristan Porter.** Department staff included Deputy Commissioner Etnier, Col. Joe Fessenden, Lt. Mercier, MPO Paul Joyce, MPO Jon Cornish, Terry Stockwell, Deirdre, Gilbert, Margaret Hunter, Bruce Chamberlain and L. Churchill. Other attendees included Susan Jones (Commercial Fisheries News), Joan Amory (Working Waterfront), John Richardson (Portland Press Herald); Fishermen from Zone G: James Henderson (Zone G Chair), Jim Alwin, Dean Wintle, Todd Hubbard; and Fishermen from Zone F: Jeff Adams, Keith Lane, Willis M. Spear Jr., Lyman Kennedy (Zone F co-Chair), Mark Wintle, Bill Doane, Frank Strout and George Olson.

2. Approval of minutes (April 16, 2003)

- ***Motion: (L. Howell, S. Train) Unanimous. Motion to approve the minutes of the April 16, 2003 meeting.***

3. Regulations - Action

Chapter 25.08(B)(3)(a) Double Tagging in Zone G

Col. Fessenden reviewed the history of the proposed regulation and issues. He described the difficulties enforcing the 51/49 law and fishing the majority of traps in one's home zone, without the double tag rule. The trap tag program in general is difficult to enforce however overall it works OK. It would remain a problem without the double tag rule as enforcement would still require finding/hauling more than half one a violator's traps outside their home zone. Other areas have shown similar but minor related problems to this area. There have been up to ½ dozen complaints in G.

S. Train: Is it harder to prove a violation of someone fishing (over their majority) from F in G or the number of Zone G fishermen that fish over 800 (their maximum)?

Col. Fessenden: The rules have changed. Since every trap now has to be tagged and is assigned to a boat the trap tag program has become much easier to enforce, which is a different situation. Cases have now been made on tag violations that have resulted in license suspensions. The seizure operation that we hauled over 1,400 traps in Penobscot Bay is a past example.

C. Pendleton: Is the procedure is the same?

Col. Fessenden: When there is a complaint Patrol runs the gear and may confiscate a trap, and look for a pattern of missing tagged traps in strings.

This situation is believed to be a limited number of persons and was therefore limited in the length of time and area; those persons affected would only need to double tag the four winter months. Any place in the state could have this same problem but this area has been the focus of the complaints. If there were another way we'd do it. The additional cost to a fisherman would be about \$40 for the tags. We believe there may be 25-30 guys or as high as 50. This area has been fished this way since I was an officer in this area. We try to substantiate a complaint and if it is not substantiated then the person who complains may lose their integrity with Patrol.

The Chair allowed persons in the audience to speak to the Council members.

Jim Alwin, Zone G expressed support; the rule is a necessary enforcement tool.

Jim Henderson, Zone G Chair: wanted the rule as originally written for year round tagging.

Frank Strout, Zone F: The summary of comments is wrong, the 94-signature petition does not support for the rule for 4 months; this is a bad precedent; could be a summer problem; could mean 4 tags per trap for tagging his son's [apprentice] traps.

Todd Hubbard, Zone G: The reason for the 94-signature petition was that we supported the rule and also wanted it to be year round; not against it.

Bill Doane, Zone G: This is not right; persons can remove my tags and get me in trouble. Patrol should just haul the gear.

Willis Spear, Zone F: This will result in having to change the zone boundaries. Should have used a different boundary in the first place and this wouldn't be a problem.

George Olsen, Zone F: Do not support.

Keith Lane: If I'm missing tags the State is just setting me up for a violation.

Mike Wintle, Zone F: Oppose.

Dean Wintle, Zone E: Oppose.

Lyman, Kennedy, Zone F co-chair: Before the zone and limited-entry rules there were 12 boats fishing 2,000 traps apiece in this area that were then cut back to 800 traps each. The added tag is another inconvenience to prove one is not cheating. Those boats have reduced their effort by 2/3. The Portland boats will switch to Zone G and instead of fishing 399 traps those boats will fish all 800 traps resulting in an increased number of traps in the long term.

Council members discussion points: unenforceable laws are no good; shouldn't just target a small number of persons; the industry should work through the zone council then go to enforcement.

- ***Motion: (C. Ames, S. Train) Motion to approve.***

Discussion points: seasonality issue of winter versus year round; not practical; unenforceable; will come from other zones too.

Col. Fessenden: On the system now, if you haul a trap and find tags are intentionally cut the fisherman should contact Marine Patrol; we do catch persons fishing other persons traps and we watch to find intent such as the baiting of another persons traps, that shows intent.

Motion continued:

Affirmative: L. Howell – as a less than optimal solution.

Negative: B. Sutter, S. Train, C. Ames, B. Pyne, K. Porter, A. Jordan

Abstain: C. Pendleton – as a Zone G license holder.

The council vote did not approve the proposed rulemaking in Chapter 25.08(B)(3)(a) Double Tagging in Zone G.

4. Regulations - Pending

Chapter 25.93(F) Zone D Exit Ratio

Terry Stockwell reviewed the history and development of the proposed rulemaking to date. A public hearing was held May19 that had a low turn out. Approximately 40 licenses are retired in Zone D per year. There are currently 8 apprentices on the Zone D waiting list. There have been a lot of complaints about overcrowding in this Zone. This is the only zone council that chose to readdress this issue this year when the rules permit them to do so.

Discussion points: When the exit ratio went to 1:1 the council thought that 1:1 was the only option when a 5:1 ratio was supported by the council. The license numbers are limited to the levels issued in 1997 or 30% then the ratio has to be set back to 1:1. There are approximately 200 apprentice licenses; many sign up who do not follow through. Many are students and opt out of the apprentice program as when they turn 18 they are in. Self-management means debating these issues. Rubber-stamping an issue is not co-management. If the 5:1 does not go forward then the 1:1 ratio remains in effect and may be reviewed again in 2 or 3 years.

Most of the council members today were council members during the previous recommendation and rulemaking and their current recommendation has been a conscious decision.

6. Other Business

Due to the lack of items that would be available for the next meeting the June meeting will be cancelled. Notices will be mailed.

A recently received special license request from Philip A. Rosen, representing his guided tour business WildHorse Adventures out of Bucksport was presented to the council members. This request would include the taking and possession of common marine organisms other than lobster that are less than the legal size and out of season. Specific exemptions include 12 M.R.S.A. §6811 and Chapter 27 pertaining to sea cucumbers; §6601 and Chapter 10.04 pertaining to the shellfish; Chapter 13 pertaining to Whelks and §6501 pertaining to the commercial license possession requirement. Specimens would be collected by SCUBA diving during tours in the Penobscot Bay area typically between Bucksport and Vinal Haven. Marine organisms would be held temporarily in a live well of seawater on board the charter vessel while anchored. The activity would generally occur from June through September with tours occurring twice per week. Number of renewals: 4; no human consumption allowed; and standard notification to Marine Patrol would be included.

- ***Motion: (C. Pendleton, B. Sutter) Unanimous. Motion to approve the special license for Philip A. Rosen.***

(L. Howell had to depart the meeting.)

4. Regulations – Pending continued

Chapter 26

Margaret Hunter provided a description of the development of the up-coming proposed rulemakings for setting the annual urchin season and related rules. She explained that the sea urchin zone council felt that it was unfair to treat the eastern area (Zone 1) season that is doing relatively well the same as the western area (Zone 2) and therefore has proposed separate seasons per zone. The area described as the western portion of Zone 2 is from Schoodic Point to the border. Brief discussion.

Chapter 26.07(1) and 26.07(2) – Seasons for Zone 1 and Zone 2

Would establish the 2003-2004 sea urchin fishing seasons for both zones. The proposed seasons are for 94 open days similar to last season, except for an additional 10-day closure in western Zone 2 in March, and an 84-day season for Zone 1 draggers. Calendars describing the proposed seasons are enclosed.

Chapter 26.02 and 26.03 – Minimum and Maximum Size Limits

Would change the existing size limit rules to require Zone 1 divers to “cull on bottom”, not harvesting more than 20% undersized or oversized urchins. M. Hunter explained that the industry tells us that about half of the divers are “arm sweeping” urchins into catch bags, not selectively taking the urchins, which this would help to prevent the taking of culls when it is freezing, lowering survival rates or from being culled back over board into deep water where there is no feed.

Chapter 26.06 – Large-Mesh Bags for Zone 2 Divers and Rakers

Would require that Zone 2 divers and rakers use catch bags with a mesh opening of no less than $2\frac{3}{8}$ inches between knots (stretch opening), which is just under $1\frac{1}{2}$ inches square. The Department has evidence of escapement ability that this would address to also help survival rates.

Chapter 26.01 and 26.05 – Technical Changes

Would change the words “territorial waters” to “coastal waters”, to be consistent with other rules.

Informational meetings are also planned to review the sea urchin zone council's recommendation that Zone 2 draggers only use light gear, which would mean that scallop draggers would not be allowed to retain urchin by-catch in scallop gear. A 2-inch square mesh escape panel on top of Zone 2 drags is also part of their recommendation.

Chair B. Pyne: Pemaquid to the border is cleared; why is there no serious action being taken in Zone 1?

M. Hunter: It is felt that the culling on bottom would equal an effort reduction; they estimate it would slow some harvesters by ~10%; the landings represent about a 20% cut and therefore would come to a 30% reduction in catch or by-catch.

Chair B. Pyne: culling on bottom is good but it has only gone down hill. We know that the landings are skewed due to persons getting out of the fishery. However, the 94-day season has been about the same number of days each year for the past 4-5 years while there has been about a 60% drop in landings.

M. Hunter: The divers talk about ledges versus draggers but divers are not as benign as once thought. We agree it is a gamble. This is co-management and there was not the will to do more.

K. Porter: There have been different factors affecting the landings over the past few years.

M. Hunter: The Commissioner promised to leave it alone for a few years and has done that.

B. Sutter: Landings for Zone 1 will be only 5-600,000 lbs down from 4.7 million lbs in 2000 and 4.1 in 2001 plotting a straight line through each year's landings.

Dep. Comm. Etnier: The Department is committed to reviewing and we do not know where this may lead however, the Commissioner is not granting another 2 year hold and will be reviewed again soon.

S. Train there is very little diving in Casco Bay.

A. Jordan: Why has nothing been done?

B. Sutter: There has been something done. 2 years ago there was a 25% effort reduction followed by a 40% effort reduction.

M. Hunter: There is difficulty with the assessment techniques.

B. Sutter: The Russians pay \$5/day to their workers and ours is a depressed world market; they also have lower transportation costs [to the Asian/Japanese markets].

M. Hunter: License numbers have dropped from a high of ~2,700 to ~800.

B. Sutter: It is a combination of harvest, price, and market; there was no significant commercial fishery until the late 80's [here].

Draft Shellfish Sanitation rules review continued:

Draft Chapter 17 Shucker-Packer

Draft Chapter 18 - Shellstock Shipper

Draft Chapter 19 – Reshipper

Draft Chapter 20 – Depuration

Draft Chapter 9 Harvester: Shellstock Harvesting, Handling and Sanitation

See handouts. DMR's Seafood Technologist Supervisor Bruce Chamberlain again provided explanations and helped with discussion questions from the council members reviewing the draft proposed rules. (Also see the April minutes.)

Discussion and points to consider by chapter:

The time of harvest for dragging quahogs would be the start of dragging that day.

A Shucker-Packer is not allowed to repack.

Chapter 21 Relay is similar to Chapter 20 Depuration and will also need to be updated at another time.

Also see: <http://issc.org/> or http://www.issc.org/On-Line_docs/onlinedocs.htm for more information about the Interstate Shellfish Sanitation Conference and Model Ordinance.

K. Porter: What about wet storage of quahogs in floats in the harbor?

B. Chamberlain: we have a handle on the floats.

B. Sutter: Reporting by harvesters?

B. Chamberlain: Not under the current rules.

Chapter 9.03(C)...should "dirty tarps" also be included under 9.04(A)(5)?

9.04(B)(1)...add "air temperature" after 45 degrees Fahrenheit?

9.06 Wet Storage has been removed, as harvesters under the Model Ordinance (MO) are not allowed to do this.

9.08 Recall Procedure: This is under review and may be changed. The MO requires a harvester to have a recall procedure if they sell to someone other than a certified dealer. The FDA inspector has been asked to provide examples of how this works in other states.

Chapter 17 Shucker Packer: About 20% of the certified dealers are also Shucker-Packers.

Chapter 18.04(B) and (B)(2) ...allowing shellstock and shucked meat storage for up to 2 hours at points of transfer conflicts with other temperature control storage provisions and should be removed.

Should the storage requirements in 18.05 and (A) be duplicated in 18.04?

Chapter 19.04(B) and 19.05(B) Reshipper: Remove same text identical to 18.04(B)(2).

Chapter 20 Depuration: Review when L. Howell is present.

5. Report(s)

NEFMC

Groundfish discussion:

C. Pendleton: The Maine representatives have made motions that we oppose.

A. Jordan: A 65% cut will result in no industry, where do we go? We've met with the Governor. An emergency rule for one year will go on forever.

C. Pendleton: I wrote a letter published in *Fishermen's Voice* about big versus little boat. The permits are shrinking towards Portland. Would this Advisory council initiate a position letter opposing the issue? Many persons still don't know about this. Yesterday was the first time there was an article in newsprint. The comment period has been extended for 2 weeks.

B. Sutter: Those with permits may sell them.

S. Train: There is a latent effort problem.

C. Pendleton: This is not conservation neutral. Comments must be in by June 10th.

A. Jordan: We need more than "doing the best we can". We need the Commissioner's support.

C. Pendleton: We feel that this would do some good, and give the Department some direction and political cover.

S. Train requested that C. Pendleton and A. Jordan draft a letter for the Advisory Council's Chair to review on the proposed groundfish license lease scheme as proposed by the National Marine Fisheries Service (NMFS).

Legislature See handout.

6. Other Business continued

A hearty thank-you was paid to Advisory Council member Charlton Ames for having served this council since 1995 as he has continued to attend and serve as a member until this time when a replacement for his seat has been made. Advisory Council member Jenny Bichrest's seat has also been replaced; Jenny has also served two consecutive terms.

The new Advisory council members, once sworn in, will be Dana Temple of Bristol Seafood, Al West of Stinson's and Rod Mitchell of Browne Trading.

The meeting adjourned (no quorum).

Reminders:

June 18, 2003 meeting – cancelled

The Wednesday, July 16, 2003 meeting will be held as scheduled in Hallowell starting at 1:00 pm.